

Party's Name: Cranney Bros.

Attorneys' Names and Address

Jeffrey C. Fereday

Michael C. Creamer

GIVENS PURSLEY & HUNTLEY LLP

277 North 6th Street, Suite 200

P.O. Box 2720

Boise, Idaho 83701-2720

(208) 342-6571

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OCT 30 1995

Department of Water Resources
Adjudication Bureau

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re: SRBA

Case No. 39576

Subcase Nos. A36-04260B, A36-00048A, A36-00049, A36-02169, A36-00039D, A36-00048A

MEMORANDUM IN SUPPORT
OF CONSOLIDATED MOTION
TO LIMIT DISCOVERY AND
REQUEST FOR EXPEDITED
HEARING

DESCRIPTIVE SUMMARY

This is a Memorandum in Support of the Motion brought by Cranney Bros. to limit the scope of discovery in the depositions of Cranney Bros. noticed by the claimants, and requesting expedited hearing.

MEMORANDUM

Cranney Bros., ("Cranney") hereby submits its Memorandum in Support of Cranney's Consolidated Motion to Limit Discovery in the above-captioned subcases.

ARGUMENT

Cranney has submitted his Motion to Limit Discovery to establish necessary

ground rules applicable to the depositions that have been noticed by counsel for Claimants Brailsford, McFaddan and Walmsley ("Claimants") in subcase numbers 36-04260B, 36-00048A, 36-00049, 36-02169, and 36-00039D. Copies of Claimants' Notices of Deposition Duces Tecum ("Notices") are attached hereto as Exhibits A through E.

The Notices imply that the Claimants intend to inquire into specific facts related to Cranney's water rights, including their nature, extent, and use, and to inquire into facts in possession of Cranney, or Cranney's opinions, regarding Cranney's water rights, those of the Claimants, and the validity of Claimants' claims or objections. Since Cranney currently is not a party to the above-referenced subcases, and in light of the Court's August 28, 1995 Protective Order, Cranney submits that the scope of discovery at the scheduled depositions should be necessarily limited to the issue of whether Cranney has good cause for filing late responses to Basin 36 claims.

Judge Hurlbutt's Order of August 28, 1995 granting Cranney's Motion for Protective Order, held that discovery on a person who has filed a motion to file late objections or responses "may be appropriate" prior to a decision by the Special Master on such motion. The Court also held that the Special Masters are responsible for fashioning discovery in the subcases as they deem appropriate. Also, Judge Hurlbutt's July 28, 1995 Order Granting in Part, and Denying in Part, Joint Motions for Amendment of Administrative Order 1, held that "it is necessary to provide a mechanism for parties to participate in subcases where participation is required due to the removal of the Director and IDWR as a party and the change in status of the

Director's Report as a pleading. . . . The Special Master shall require good cause and meritorious position when reviewing these Motions. *Parties must allege facts, which if true, would constitute a meritorious position.*" Order at 2. The issues before the Special Master at present are whether Cranney may become a party to the subject subcase by reason of Cranney's good cause for filing late, and whether Cranney has a meritorious position. Discovery, by any means, therefore, should be limited to obtaining facts material and relevant to those issues only.

Thus, if discovery is appropriate now at all, its scope is necessarily limited to facts surrounding Cranney's knowledge of the state of the Claimants' Claims and the party status of the Department of Water Resources or others in the SRBA, and Cranney's knowledge of other facts relevant to Cranney's reasons or rationale for not filing responses to the Claimants' Objections during the period originally established by the Court.

With respect to whether Cranney has a meritorious position, Cranney submits that such can and should be ascertained by examination of the allegations of Cranney's proposed Response. The Special Master should, as per Judge Hurlbutt's July 28, 1995 Order, assume that such allegations can be proven at trial, and then determine whether as such, they state a meritorious claim. *See also, Olson v. Kirkham*, 111 Idaho 34, 720 P.2d 217 (Ct. App. 1986) (party moving to set aside a default judgment must plead facts which, if established, would constitute a defense), *Baldwin v. Baldwin*, 114 Idaho 525, 757 P.2d 1244 (Ct. App. 1988) (moving party must allege facts which, if established, would constitute a meritorious defense to the action). Therefore, for purposes of determining whether Cranney should be permitted

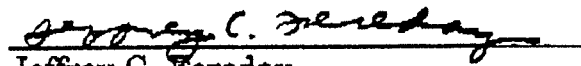
to become a party to a subcase, there is no reason for discovery now of facts going to the merits of Cranney's proposed Response.

Consequently, the nature, extent and use of Cranney's water rights are not at issue in the above-captioned subcases. And because Cranney is not yet a party, and has not had an opportunity to pursue its own discovery, questions by the Claimants regarding facts and opinions possessed by Cranney regarding the Claimants' claims and objections, or the Department's recommendation in the Director's Report, clearly would be irrelevant, premature, wasteful and burdensome to Cranney at this stage of the proceedings. Finally, because the merits of Cranney's position may be determined by the Special Master from allegations in Cranney's response, that issue is not appropriate for discovery.

For the foregoing reasons, Cranney respectfully requests that the Special Master issue an order limiting all discovery to obtaining facts relevant only to whether Cranney has good cause for filing a late response to the above-captioned water right claims, until such time as Cranney may be admitted as a party thereto.

DATED this 26th day of October, 1995.

GIVENS PURSLEY & HUNTLEY LLP



Jeffrey C. Fereday
Michael C. Creamer
Attorneys for Cranney Bros.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of October, 1995, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Chief, Natural Resources Div.
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

☐ U.S. Mail ☒ Fax ☐ Hand Delivery ☐ Federal Express

Patrick D. Brown
Hepworth, Lezamiz & Hohnhorst
133 Shoshone St. North
P.O. Box 389
Twin Falls, ID 83303-0389

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Jeffrey C. Fereday

EXHIBIT A

RECEIVED

OCT 23 1995

Givens Pursley & Associates

Claimants:

Robert H. Brailsford

Attorney Name and Address:

HEPWORTH, LEZAMIZ & HOHNHORST,
CHARTERED
133 Shoshone St. North
P.O. Box 389
Twin Falls, ID 83303-0389
Telephone: (208)734-7510

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Subcase No. A36-04260

NOTICE OF TAKING DEPOSITION
DUCES TECUM UPON ORAL
EXAMINATION OF
CRANNEY BROTHERS

Case No. 39576

TO: Cranney Brothers and to their attorneys of record:

You are hereby notified that, pursuant to I.R.C.P. 30(b)(6), you are to appear for the taking of your deposition, commencing on Friday, November 3, 1995, at 9:00 o'clock a.m., at the Cassia County Courthouse, Jury Room, 1459 Overland Ave., Burley, Idaho, before a Notary Public, or before some other officer authorized by law to administer oaths; you are to either testify or, alternatively, to designate one or more officers, directors, managing agents or other persons who will be present at the time and place indicated to

1 testify on behalf of Cranney Brothers with regard to the following:

2 1. Your knowledge of facts, opinions, and conclusions that relate to the
3 basis upon which you seek to intervene and the basis, or lack thereof, for the right which
4 is the subject of this subcase; and

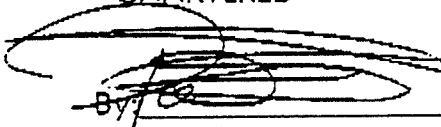
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6 and use of water you use or have claimed a right to use in the SRBA.

7 The deponent is required to bring with him to said deposition the following:
8 all documents of any type that relate to claims to a water right in this subcase, Cranney
9 Brothers' basis for intervening claims to water rights by Objector Cranney Brothers.

10 The oral examination will continue from day to day until completed. You are
11 invited to attend and cross-examine.

12 Dated this 19 day of October, 1995.

13 HEPWORTH, LEZAMIZ & HOHNHORST,
14 CHARTERED

15 By: 

16 Patrick D. Brown
17 Attorneys for Claimants
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CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 133 Shoshone St. North, P.O. Box 389, Twin Falls, Idaho 83303, and one of the attorneys for the claimants in this matter, certifies that on the 19 day of October, 1995, he served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

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Givens, Pursley & Huntley
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Linda Ledbetter
Magic Valley Reporters
P. O. Box 611
Twin Falls, ID 83303-0611

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Patrick D. Brown

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EXHIBIT B

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Givens, Pursley & Huntley

Claimants:

Dan H. and Irma R. McFadden

Attorney Name and Address:

HEPWORTH, LEZAMIZ & HOHNHORST,
 CHARTERED
 133 Shoshone St. North
 P.O. Box 389
 Twin Falls, ID 83303-0389
 Telephone: (208)734-7510

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Subcase No. A36-00048A

Case No. 39576

NOTICE OF TAKING DEPOSITION
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 CRANNEY BROTHERS

TO: Cranney Brothers and to their attorneys of record:

You are hereby notified that, pursuant to I.R.C.P. 30(b)(6), you are to appear for the taking of your deposition, commencing on Friday, November 3, 1995, at 9:00 o'clock a.m., at the Cassia County Courthouse, Jury Room, 1459 Overland Ave., Burley, Idaho, before a Notary Public, or before some other officer authorized by law to administer oaths; you are to either testify or, alternatively, to designate one or more officers, directors, managing agents or other persons who will be present at the time and place indicated to

1 testify on behalf of Cranney Brothers with regard to the following:

2 1. Your knowledge of facts, opinions, and conclusions that relate to the
3 basis upon which you seek to intervene and the basis, or lack thereof, for the right which
4 is the subject of this subcase; and

5 2. Facts, opinions and conclusions you possess regarding the establishment
6 and use of water you use or have claimed a right to use in the SRBA.

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8 all documents of any type that relate to claims to a water right in this subcase, Cranney
9 Brothers' basis for intervening claims to water rights by Objector Cranney Brothers.

10 The oral examination will continue from day to day until completed. You are
11 invited to attend and cross-examine.

12 Dated this 19 day of October, 1995.

13 HEPWORTH, LEZAMIZ & HOHNHORST,
14 CHARTERED

15 BY: 
16 Patrick D. Brown

17 Attorneys for Claimants
18
19
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CERTIFICATE OF SERVICE

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Givens, Pursley & Huntley
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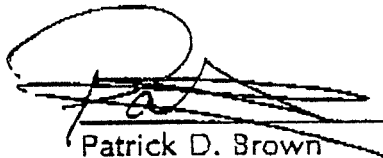
☒ U.S. Mail
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☐ Overnight Mail
☐ Telecopy (Fax)

Josephine P. Beeman
Dillion, Bosch, Daw & Bock, Chtd.
Fidelity Building
242 N. 8th Street, Suite 200
Boise, ID 83702

☒ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy (Fax)

Linda Ledbetter
Magic Valley Reporters
P. O. Box 611
Twin Falls, ID 83303-0611

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Patrick D. Brown

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EXHIBIT C

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OCT 23 1995

Givens, Pursley & Huntley

1
2 Claimants:

Dan H. and Irma R. McFaddan

3 Attorney Name and Address:

4 HEPWORTH, LEZAMIZ & HOHNHORST,
5 CHARTERED
6 133 Shoshone St. North
7 P.O. Box 389
8 Twin Falls, ID 83303-0389
9 Telephone: (208)734-7510

10
11 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
12 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS
13

14 * * * * *

15 In Re SRBA

16) Subcase No. A36-00049
17)
18)

19) NOTICE OF TAKING DEPOSITION
20) DUCES TECUM UPON ORAL
21) EXAMINATION OF
22) CRANNEY BROTHERS
23)

Case No. 39576

* * * * *

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HLH

Chartered

Hepworth,
Lezamiz &
Hohnhorst

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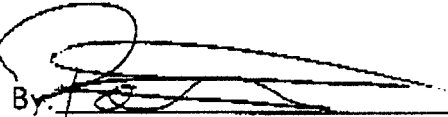
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14 CHARTERED

15 By: 

16 Patrick D. Brown
17 Attorneys for Claimants
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Chief, Natural Resources Div. ☒ U.S. Mail
Office of the Attorney General ☐ Hand Delivered
State of Idaho ☐ Overnight Mail
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Boise, ID 83701-2720 ☐ Telecopy (Fax)

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Fidelity Building ☐ Overnight Mail
242 N. 8th Street, Suite 200 ☐ Telecopy (Fax)
Boise, ID 83702

Linda Ledbetter ☒ U.S. Mail
Magic Valley Reporters ☐ Hand Delivered
P. O. Box 611 ☐ Overnight Mail
Twin Falls, ID 83303-0611 ☐ Telecopy (Fax)


Patrick D. Brown

(WATER\600049DP.30B)llm

EXHIBIT D

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Givens, Pursley & Huntley

Claimants:

Dan H. and Irma R. McFadden

Attorney Name and Address:

HEPWORTH, LEZAMIZ & HOHNHORST,
 CHARTERED
 133 Shoshone St. North
 P.O. Box 389
 Twin Falls, ID 83303-0389
 Telephone: (208)734-7510

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

) Subcase No. A36-02169

)

) NOTICE OF TAKING DEPOSITION

)

) DUCES TECUM UPON ORAL

)

) EXAMINATION OF

Case No. 39576

)

) CRANNEY BROTHERS

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H_LH
 Chartered

Hepworth,
 Lezamiz &
 Hohnhorst

NOTICE OF TAKING DEPOSITION DUCES TECUM UPON ORAL EXAMINATION OF CRANNEY BROTHERS - 1

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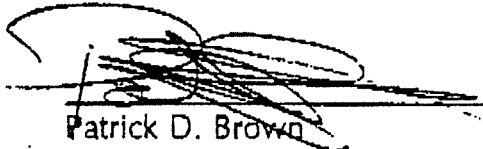
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Givens, Pursley & Huntley
P. O. Box 2720
Boise, ID 83701-2720

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Patrick D. Brown

(WATER\602169DP.30B)\lm

EXHIBIT E

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OCT 23 1995

Givens, Pursley & Huntley

Claimants:

Fred J. and Susan K. Walmsley

Attorney Name and Address:

HEPWORTH, LEZAMIZ & HOHNHORST,
 CHARTERED
 133 Shoshone St. North
 P.O. Box 389
 Twin Falls, ID 83303-0389
 Telephone: (208)734-7510

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Subcase No. A36-00039D

Case No. 39576

NOTICE OF TAKING DEPOSITION
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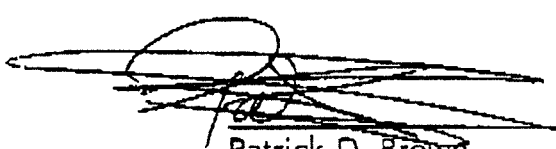
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Patrick D. Brown

(WATER\600039DP.30B)\lm

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re: SRBA

Case No. 39576

Subcase Nos. A36-04260B, A36-
00048A, A36-00049, A36-02169,
A36-00039D, A36-00048A

ORDER SETTING HEARING

YOU, AND EACH OF YOU, ARE HEREBY NOTIFIED That on the 31st day of October, 1995, at the hour of 9:30 a.m., or as soon thereafter as counsel may be heard, the SRBA Court will hear, via telephone, Cranney Bros.' Motion to Limit Discovery.

DATED this ____ day of October, 1995.

Special Master Terry Dolan